

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NATIONWIDE CAPITAL FUNDING,
INC.,

Plaintiff,

V.

JOHNSON CONTROLS FIRE
PROTECTION, LP,

Defendant/Third Party Plaintiff

V.

AES DESIGN & CONSTRUCTION, LLC,

Defendant/Third Party Defendant

V.

JOE E. DANIELS and IULIIA DANIELS,

Defendants.

PLAINTIFF'S MOTION TO COMPEL MEDIATION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Nationwide Capital Funding, Inc., applies to this Court for an order to compel the parties to mediation. In support thereof, Plaintiff shows the following:

1. Plaintiff filed this action to recover for damages from Defendants/Third Party Defendants due to a breach of contract.
2. On December 23, 2020, the parties filed a Joint Discovery/Case Management Plan Under Rule 26(f) Federal Rules of Civil Procedure. As indicated in the parties' Joint Discovery/Case Management Plan, the parties agreed to mediation in this matter, and agreed that an early mediation may be productive.

3. The court signed a docket control order dated December 28, 2020 which required the parties mediate their disputes or submit to a settlement conference before the magistrate judge.

4. Counsel for Plaintiff has made a number of attempts to contact counsel for all of the Defendants to schedule mediation. Plaintiff has suggested a neutral location (San Antonio) and recommended Don Philbin as the mediator.

5. As of the date of the filing of this Motion, Plaintiff's attempts to communicate regarding mediation have been unanswered.

6. Plaintiff requests that the Court sign an order compelling counsel for the parties to proceed in good faith to attempt to resolve their disputes through mediation, and within 30 days of entry of an Order, select a mediator and mediation date. Plaintiff further asks this court to stay further proceedings in this case until after the mediation if the disputes among the parties are not settled.

7. Plaintiff seeks this relief not for delay, but so that justice may be done.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this matter be set for hearing, notice of hearing be sent to all parties in this case, and that upon hearing, the Court order that:

- (a) The parties submit the entire controversy to mediation;
- (b) The parties, within 30 days of this order, select a mediator and mediation date;
- (c) this action be stayed in its entirety pending the results of said mediation proceedings; and
- (d) Plaintiff have such other and further relief to which it may be justly entitled.

Respectfully submitted,



Peter E. Avots
Federal I.D. No. 11424
State Bar No. 01456450
WOOD, BOYKIN & WOLTER
A Professional Corporation
615 North Upper Broadway, Suite 1100
Corpus Christi, Texas 78401-0748
(361) 888-9201
(361) 888-8353 (facsimile)
pea@wbwpc.com

ATTORNEY FOR NATIONWIDE
CAPITAL FUNDING, INC.

CERTIFICATE OF SERVICE

I certify that on this 21st day of July, 2021, a true and correct copy of the foregoing has been forwarded to all parties as indicated below:

Jude T. Hickland
Faegre Drinker Biddle & Reath LLP
1717 Main Street., Suite 5400
Dallas, Texas 75201

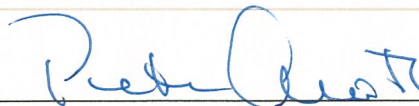
First Class Mail and ECF

Steve Schlacks
The Schlacks Law Firm PLLC
10200 Grogan's Mill Road, Suite 235
The Woodlands, TX 77380

First Class Mail and ECF

Matthew L. Pepper
Steven Schlacks
Pepper & Associates, PC
10200 Grogans Mill Road, Suite 235
The Woodlands, Texas 77380

First Class Mail and ECF



Peter E. Avots